UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte NIGEL D. YOUNG

Appeal No. 2004-2288
Application No. 10/084,723

ON BRIEF

Before PAK, WARREN, and KRATZ, *Administrative Patent Judges.*

PAK, *Administrative Patent Judge.*

REMAND TO THE EXAMINER

This case is not ripe for meaningful review and is, therefore, remanded to the examiner for appropriate action consistent with the views expressed below.

On March, 9, 2004, the appellant submitted a Reply Brief, along with seven articles in response to the Sections 102(b) and 103(a) rejections set forth in the Answer. In the Communication dated May 17, 2004, the examiner stated that "[t]he [R]eply [B]rief filed 3/9/04 has been entered and considered." However, the examiner did not indicate whether the seven articles attached

to the Reply Brief were entered and considered. Consequently, we remanded the application to the examiner to clarify the status of these seven articles. If the examiner approved entry of these articles, the examiner was required to address the arguments relating to the articles set forth in the Reply Brief.

Consistent with our Remand Order dated July 30, 2004, the examiner determined the status of these articles. According to the examiner (the Communication dated August 19, 2004, page 2):

> The Application was remanded by the Board of Appeals [and Interferences] to clarify the status of seven sample articles, which were cited in the Applicant's Reply Brief; [sic.] filed on 3/9/04. Persuant [sic., Pursuant] to 37 CFR § 1.195, the examiner finds the seven sample articles, which are requested to be entered, to be late in the prosecution. The articles if to be [sic., if they are] significant to the Appellant's arguments[,] should have been brougtht [sic., brought] to the examiner's attention much sooner, since the examiner has maintained the same interpretation of the terms pixel and electrodes throught [sic., throughout] the prosecution, and from that basis the articles will not be entered.

In response to this statement, the appellant filed a Reply dated September 9, 2004. This Reply impliedly requested that the U.S. Patent and Trademark Office enter the seven articles into the record. See page 1. Specifically, the Reply stated (*Id.*) that:

> The sample articles were presented in response to the Examiner's expressed definition of the term "electrode" in the Examiner's Answer dated 16 January 2004 (page 9, lines 6-22). The Examiner had not presented this definition in any prior correspondence, and thus the applicant had no reason to rebut the definition [via the seven articles] prior to the Examiner's Answer.

As this matter is not within the jurisdiction of the Board of Patent Appeals and Interferences, we remand this application to the examiner to treat the Reply as a petition under 37 CFR § 1.181 (2004) and take appropriate steps to have this petition reviewed. *See Manual of Patent Examining Procedure (MPEP)* § 1002.02(c)(8th Ed., Rev. 1, August 2001).

This remand to the examiner pursuant to 37 CFR § 41.50(a)(1) (effective September 13, 2004, 69 Fed. Reg. 49960 (August 12, 2004), 1286 Off. Gaz. Pat. Office 21 (September 7, 2004)) is made for further consideration of a rejection. Accordingly, 37 CFR 41.50(a)(2) applies if a supplemental examiner's answer is written in response to this remand by the Board.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

REMANDED

CHUNG K. PAK)
Administrative Patent Judge)
)
)
CHARLES F. WARREN) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
) INTERFERENCES
)
PETER F. KRATZ)
Administrative Patent Judge)

CKP:hh

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